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RUEHMIL/AMCONSUL MILAN 9880
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UNCLAS SECTION 01 OF 04 ROME 000227

SIPDIS

STATE PLEASE PASS TO USTR FOR JENNIFER CHOE GROVES, LESLIE
YANG, CHRISTOPHER WILSON
STATE PLEASE PASS TO EEB/TPP/IPE JOELLEN URBAN, TIMOTHY
MCGOWAN, ROBERT WATTS
DEPT OF COMMERCE FOR SUSAN WILSON AND AMANDA WILSON
DHS PASS TO ICE

E.O. 12958: N/A

TAGS: [IT](#) [KIPR](#) [ETRD](#) [ECON](#) [EINT](#)

SUBJECT: IPR SPECIAL 301 REVIEW -- MISSION ITALY INPUT

REF: A. SECSTATE 8410

[B](#). ROME 143

[C](#). ROME 89

[D](#). 08 ROME 1337

[1](#)1. (U) Summary: The fall of the Prodi government in 2008 understandably interrupted what had been strong momentum on IPR issues in Italy. Post has recently seen a renewed executive branch determination to tackle IPR issues, in particular, on-line piracy. Problems still exist, especially the current lack of "notice and take down" procedures, as well as in the failure to strike a balance between privacy concerns and protection of IPR. Moreover, weak data collection efforts hinder efforts to gauge the scope of IPR problems and to benchmark progress. For these reasons, Mission recommends that Italy remain on the Special 301 Watch list and that the report mention the issues cited, together with attention to links between the Mafia and counterfeiting operations. We also recommend that this year's report acknowledge efforts the GOI has made and continues to make in drawing public attention to the IPR issue and in the integration of IPR into Italian foreign policy. GOI contacts have repeatedly expressed disappointment in the 2008 Special 301 report, specifically asserting that Italy was not given recognition for efforts to raise the profile of IPR protection in Italy. Post acknowledges that strides were made in this area, but they have not been supported by tangible dissuasive actions by the judicial system. End Summary

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Overview of IPR in Italy
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[1](#)2. (U) Italy has adequate IPR laws in place, but relatively few IPR cases are brought to trial. Judges still regard IPR violations (particularly copyright violations) as petty offenses, and the magistracy can be said to be the weak link in combating IPR theft in Italy. The Italian Finance Police (GDF) and Italy's Customs police (Dogana) are active and skilled investigators, but they are frustrated by the fact that few cases reach final sentencing. Historically there has been a reluctance by judicial officials to impose deterrent penalties. A new bill already approved by the Chamber of Deputies and expected to be approved soon by the Senate will increase penalties for a range of crimes, including counterfeiting and piracy. While some judges still seem reluctant to view IP infringement as a serious crime, the GOI has made IP instruction part of the regular training that all judges must receive, and some high ranking members of the judiciary publicly supported the view that IPR crimes

should be treated seriously.

¶3. (U) Historically, the Italian government has viewed trademark infringement more seriously than crimes against copyright and has focused on getting illegal vendors off the streets. Recently, we believe we have seen a shift "up the food chain," with more attention on the distributors behind the vendors. Prosecutors in southern Italy say the sale of counterfeit items, including clothing, CDs, DVDs, software and even iPods, funds Mafia groups (especially the Neapolitan Camorra) and they see combating counterfeiting as a part of the fight against organized crime. They also say that these counterfeit distribution networks are large and sophisticated, with branches in other European countries, Australia and the United States.

¶4. (U) Though key figures in the government now seem to recognize the importance of IPR protection, Italy is still lacking a coordinated effort among government agencies. This is evidenced by a lack of balance between protection of privacy and protection of IPR, with privacy concerns favored. In addition, there is a continued lack of a comprehensive action plan to protect intellectual property rights, or even a comprehensive data set detailing IPR infractions investigated and actions taken.

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Examples of IP enforcement in 2008
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¶5. (U) The GDF and Dogana are actively engaged in

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investigations and seizures throughout Italy. A few examples of large or significant seizures in 2008 include the following:

-- In December police shut down a large counterfeit goods operation in Tuscany. Chinese and Senegalese nationals were arrested and police seized one million products (clothes, bags and shoes). Press reports put the value of the products at 55 million euros. Products were manufactured in China and were found in 19 warehouses in Tuscany. For the first time in Tuscany, local magistrates levied Rico-style charges against members of the organization.

-- Also in Tuscany, police seized nearly two million pairs of children's footwear with fake "true leather" labels that were found to have been manufactured with toxic materials. In this case, magistrates charged Chinese distributors with crimes against public health and charged several Italians with fraud. (Comment: Typically in Italy, IPR infringement is viewed more seriously when linked with organized crime or public health. End comment.)

-- In Milan, a successful investigation by the Guardia di Finanza led to seizure of property (bank accounts, cars, real estate) owned by a network of clothing counterfeiters led by a group of Chinese. The network was headquartered in Milan but was active in Bologna, Florence and several other cities. The counterfeited property was worth \$7 million.

-- In Catania (Sicily), GDF agents closed down a 13,000 square meter market of pirated and counterfeit goods in October 2008. Thirty stands and over 80,000 articles of fake merchandise (including clothes, toys and electric appliances) were confiscated.

-- Also in Catania, in December, the GDF confiscated some 75,000 fake articles (mainly jewelry and watches) in the city's historic center.

¶6. (U) In 2008 an Italian judge ordered Italian Internet Service Providers to block the Sweden-based file-sharing Web site "The Pirate Bay." Though the blocking of the site was

later deemed illegal, GOI contacts report that the Italian government used diplomatic channels to formally complain to the Swedish government about the site's illegal on-line activities.

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GOI efforts, a pause (and frustrations)
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¶7. (U) GOI officials have repeatedly told the Embassy that they do not feel adequate credit was given to their IP protection efforts in the last Special 301 report. In 2007-2008 the Embassy worked intensively and successfully with the GOI to secure high level endorsement of IPR protection at the highest levels of government. In addition, the Anti-Counterfeiting High Commissioner's office was actively raising the public profile of IP-related crimes. Post recognizes that this was a real step forward in government attitude and that momentum on IPR issues was high when the previous Prodi government collapsed in the Spring of ¶2008.

¶8. (U) This collapse stalled IPR protection efforts for months while elections were held and a new government organized. Shortly after the formation of the new government under PM Silvio Berlusconi, the office of the Anti-Counterfeiting High Commissioner was closed for budget reasons. The GOI asserts that the responsibilities of this office were not eliminated, but were folded into the Economic Development Ministry. This may be the case, but the loss of this office lowered its profile and independence, and continues to be mourned by IP industries.

¶9. (U) Despite this pause, some key figures in the government express determination to produce real results in IP protection. In 2008, the Economic Development Ministry created a General Directorate for Intellectual Property to take on functions previously shared between the Italian Patent and Trademark Office and the Anti-Counterfeiting High Commission. It is too early to judge the effectiveness of

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this change, however.

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Tackling Internet Piracy
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¶10. (U) Italy's G-8 presidency has provided an additional motivation to tackle on-line piracy. In early 2009, the GOI created an interministerial committee tasked with coming up with a workable action plan for tackling on-line piracy. Committee hearings with stakeholders are expected to begin in early March, and GOI contacts say they expect to see a plan that places some responsibility on Internet Service Providers and takes into consideration plans put forth in France and the UK. In addition, the GOI is pushing "Internet Regulation" as a G-8 topic. While there has been some concern, especially among critics of the government, that this might translate into suppression of on-line speech, the GOI contends that the intention is to protect IP on-line and to combat other Internet crime. The committee has also created an anti-piracy web site where industry and members of the public can monitor the committee's progress and comment on the issue.

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Inclination to Protect On-line Privacy More than On-line IPR
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¶11. (U) Alongside these positive steps have come some setbacks. Recent rulings from the Data Protection Authority (also known as the Privacy Authority) have effectively stopped investigation and prosecution of illegal downloading

of copyrighted material (Reftel C). The Privacy Authority decided that monitoring of peer-to-peer traffic is a violation of privacy rights. Monitoring of peer-to-peer traffic by rights holders had been the starting point of the majority of criminal cases made against illegal downloaders. IP industries say this decision seriously harms enforcement of copyright protection in Italy. (Comment: Though the Privacy Authority is an autonomous body, an effort by the GOI to cooperatively examine IPR and Privacy Rights could lead to methods to protect both rights. The Privacy Authority appears unwilling to consider intellectual property rights as it makes its decisions and without an Authority looking out for IPR, this effectively places privacy above IPR protection. End comment.)

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Additional Responses to Reftel A Points
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¶12. (U) Enforcement statistics: There is still a lack of uniform enforcement statistics since each enforcement agency keeps its own data and cases that pass from one agency to another may even be counted twice. In addition, there is very limited information available concerning judicial action related to IPR enforcement.

¶13. (U) TRIPS implementation: Italy's de jure IPR regime is compliant with the TRIPS agreement.

¶14. (U) Data Protection: Though the pharmaceutical industry still disputes Italy's pharmaceutical pricing practices, the embassy has had no complaints from industry regarding the protection of pharmaceutical or agricultural test data.

¶15. (U) Optical Media Piracy: While use of source identification codes is encouraged in the optical disc industries, their use is not mandated by law.

¶16. (U) Use/Procurement of Government Software: National government offices contain mostly legal software, though problems still exist at the local and regional level. In its role as G-8 president, Italy is pushing for the G-8 Intellectual Property Experts Group (IPEG) to adopt guidelines for government use of software in compliance with intellectual property rights. A non-paper was submitted containing the guidelines and will be discussed for possible adoption at the next IPEG meeting in April.

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Mission Efforts to Promote IPR Protection

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¶17. (U) Over the last 15 or so years the Embassy and Consulates have organized successful IPR promotion efforts ranging from roundtables with key GOI figures, public speeches by the ambassador and others, to awards for successful enforcement action and seminars designed to sensitize the magistracy to IPR issues. These programs have effectively raised the profile of IPR with GOI officials, as evidenced by the seriousness with which IPR and the Special 301 list are now viewed. In order to ensure that IPR protection in Italy is driven by Italians, who are best equipped to orchestrate successful IP action in their own country, the Mission is pushing IP industries in Italy to take the lead in programming events and in letting their concerns be known to officials. Officers at the Embassy and Consulates continue to meet regularly with government officials to push for policy changes that will improve IPR protection, as well as with members of investigative services to monitor IPR protection in Italy and to offer consultation. In addition the Embassy and Consulates continue to work with industry contacts to support them in their IPR promotion efforts. Mission officials also raise awareness of the problems through both public and private comments.

